

**GRANT AGREEMENT BETWEEN
THE CITY OF CHICAGO
AND THE CHICAGO PARK DISTRICT**

This Grant Agreement (the "Agreement") is entered into this 30th day of MAY, 2019 (the "Effective Date"), between the City of Chicago (the "City"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and the Chicago Park District (the "Park District"), a body politic and corporate and a unit of local government under Article VII, Section 1 of the 1970 Constitution of the State of Illinois.

RECITALS

WHEREAS, the City, pursuant to an ordinance passed by the City Council of the City on March 13, 2019 and published in the Journal of Council Proceedings for such date at pages 95531through 95598, inclusive (the "Bond Ordinance"), issued the General Obligation Bonds Series 2019A (the "Bond") and appropriated the proceeds of the sale of the Bonds for purposes described in the Bond Ordinance, including making grants to other municipal corporations, units of local government, and school districts; and

WHEREAS, the Park District intends to make certain improvements (the "Project") and each Project is generally as described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the real property associated with each Project shall be generically known as a "Property" herein and has the address indicated on Exhibit A; and

WHEREAS, the Park District desires to receive grants from the City to fund each Project from the Bond proceeds (each a "Grant"), in the total amount and allocated as set forth in the budget set forth on Exhibit A; and

WHEREAS, the Park District will use the Grant exclusively to acquire necessary materials, to compensate its contractors, and pay all capital costs related to the Project (the "Project Costs"); and

WHEREAS, on January 16, 2019 the Grantee's Board of Commissioners passed a resolution expressing its desire to accept the Grant for use in the Project (the "Park District Resolution"); and

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

SECTION 1. INCORPORATION OF RECITALS

The recitals set forth above are incorporated in this Agreement and made a part hereof.

SECTION 2. THE PROJECT

A. The Park District shall let one or more contracts for the construction of the Project in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto. Upon the City's request, the Park District shall provide evidence satisfactory to the City of such compliance. Also upon the City's request, the Park District shall provide the City with copies of all governmental licenses and permits required to construct the Project.

B. The Park District agrees to carefully inspect the Property prior to commencement of any activity on the Property to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Park District shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect the work being done on the Property.

SECTION 3. FUNDING

A. Prior to each disbursement of Grant funds, the Park District shall submit documentation regarding the applicable expenditures to the City and the Certificate of Expenditure in the form attached hereto as Exhibit B, all of which shall be satisfactory to the City in its sole discretion. Delivery by the Park District to the City of the Certificate of Expenditure shall constitute a certification to the City, as of the date of such request for execution of a Certificate of Expenditure, that:

- (i) the total amount of the request in the Certificate of Expenditure represents the actual Project Costs;
- (ii) all amounts shown as previous payments on the current Certificate of Expenditure have been paid to the parties entitled to such payment;
- (iii) the Park District has approved all work and materials for the current Certificate of Expenditure;
- (iv) the representations and warranties contained in this Agreement are true and correct and the Park District is in compliance with all covenants contained herein; and
- (v) no event of default or condition or event which, with the giving of notice or passage of time or both, would constitute an event of default exists or has occurred.

B. The Park District shall provide the City with access to its books and records relating to the Project.

SECTION 4. ENVIRONMENTAL MATTERS

It shall be the responsibility of the Park District, to investigate and determine the soil and environmental condition of the Property. The Park District may, at its sole discretion, obtain phase I and, if applicable, phase II environmental audits for the Property. The City makes no covenant, representation or warranty as to the environmental condition of the Property or the suitability of the Property for the Project or for any use whatsoever.

SECTION 5. INSURANCE

The Park District shall provide and maintain at the Park District's own expense, or cause to be provided during the term of the Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Park District shall provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

4) Professional Liability

When any architects, engineers or professional consultants perform work in connection with this Agreement, the Park District shall cause to be provided, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000.

B. OTHER REQUIREMENTS

To the extent permitted by applicable law, the Park District may self-insure for the insurance requirements specified above, it being expressly understood and agreed that, if the Park District does self-insure for any such insurance requirements, the Park District must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self-insurance program must comply with at least such insurance requirements as stipulated above.

The Park District will furnish the City of Chicago, Office of Budget & Management, City Hall, Room 601, 121 North LaSalle Street 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Park District shall submit evidence of insurance on the City of Chicago Insurance Certificate Form (which shall be made available upon request) or equivalent prior to Agreement award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreements have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Agreement shall not be deemed to be a waiver by the City.

The Park District shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve the Park District of the obligation to provide insurance a specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance shall provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by the Park District and contractors.

The Park District agrees that insurers shall waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The Park District expressly understands and agrees that any coverage and limits furnished by the Park District shall in no way limit the Park District's liabilities and responsibilities specified within the Agreement documents or by law.

The Park District expressly understands and agrees that any insurance or self-insurance programs maintained by the City of Chicago shall not contribute with insurance provided by the Park District under the Agreement.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The Park District shall require all subcontractors to provide the insurance required herein or the Park District may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of the Park District unless otherwise specified herein.

The City of Chicago Department of Finance Office of Risk Management maintains the right to modify, delete, alter or change these requirements.

SECTION 6. INDEMNITY

To the extent liability of a municipal corporation, as such is precluded by the Local and Governmental Tort Immunity Act or the common law of the State of Illinois, the Park District agrees to indemnify and hold the City, its officers and employees, harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including, without limitation, reasonable attorney's fees and court costs suffered or incurred by the City arising from or in connection with (i) the Park District's failure to comply with any of the terms, covenants and conditions contained in this Agreement; or (ii) the Park District's or any contractor's failure to pay general contractors, subcontractors or materialmen in connection with the Project.

SECTION 7. NO PERSONAL LIABILITY

No elected or appointed official or member or employee or agent of the City or the Park District shall be individually or personally liable in connection with this Agreement.

SECTION 8. TERM

The term of this Agreement shall commence on the Effective Date and shall expire upon the completion of the Project and final disbursement of the Grant funds; however, the following survive until the Bond has been fully paid and retired: (i) the duty to cooperate with and assist the City with the resolution of any governmental or other type of inquiry into or audit of the Bond and (ii) Section 9(A)(iii) below and the duty to cooperate with and assist the City with any actions the City deems necessary in its sole discretion in the event of a Tax-Exemption Default, as hereinafter defined.

SECTION 9. DEFAULTS AND REMEDIES

A. The following shall constitute an event of default under this Agreement:

(i) The Park District fails to comply with the provisions of Section 2.A. herein without the City's consent.

(ii) The Park District, without the City's written consent, fails to complete the Project within 24 months after the date of execution of this Agreement.

(iii) The Park District allows the Project or the Grant funds to be used in any way that adversely affects the tax-exempt status of the Bonds, as determined by the City in its sole discretion, including but not limited to "private business use" as defined in Section 141(b)(6) of the Internal Revenue Code (a "Tax-Exemption Default").

(iv) The Park District fails to perform, keep or observe any of its covenants, conditions, promises, agreements or obligations under this Agreement and such default is not cured as described herein.

B. Remedies

(i) If any event of default occurs, the City may terminate this Agreement. Prior to termination, the City shall give its notice of intent to terminate 30 days prior to termination (the "Notice Period") at the address specified in Section 10 hereof, and shall state the nature of the default. In the event Park District does not cure such default within the Notice Period, such

termination shall become effective at the end of such period; provided, however, with respect to those defaults which the City determines are not capable of being cured within the Notice Period, the City may allow an additional period up to a maximum of 180 days (the "Cure Period") for the Park District to effect a cure and shall give notice of the Cure Period at the address specified in Section 10 hereof. In the event Park District does not cure such default within the Cure Period, such termination shall become effective at the end of such period. If a termination becomes effective, the Park District will promptly repay the City the full amount of the Grant funds previously distributed to the Park District.

(ii) Notwithstanding the foregoing, if a Tax-Exemption Default has occurred and the City determines, in its sole discretion, that no cure is capable of correcting such default, the City may deliver an immediately effective notice of termination and the Park District will promptly repay the City the full amount of the Grant funds previously distributed to the Park District and fully cooperate with the City in any actions it deems necessary as a result of the Tax-Exemption Default.

(iii) The City may, in any court of competent jurisdiction, by any proceeding at law or in equity, secure the specific performance of the agreements contained herein, or may be awarded damages for failure of performance, or both.

C. City's Reservation of Rights. If the City considers it to be in the City's best interests, (i) it may elect not to declare default or to terminate this Agreement as to the defaulting Park District and (ii) it may elect to declare default for an individual Project or several Projects and elect to not declare default for the remainder of the Projects. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits the defaulting Park District to continue a Project despite one or more events of default, the defaulting Park District is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

SECTION 10. GENERAL PROVISIONS

A. ASSIGNMENT. This Agreement, or any portion thereof, shall not be assigned by either party without the express prior written consent of the other.

B. AUTHORITY. Execution of this Agreement by the City is authorized by the Bond Ordinance. Execution of this Agreement by the Park District is authorized by the Park District Resolution. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

C. COMPLIANCE WITH LAWS. The parties agree to comply with all federal, state and local laws, status, ordinances, rules, regulations, codes and executive orders relating to this Agreement.

D. CONSENTS. Whenever the consent or approval of one or both parties to this Agreement is required hereunder, such consent or approval will not be unreasonably withheld.

E. CONSTRUCTION OF WORDS. As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

F. COUNTERPARTS. This Agreement may be executed in counterparts and by different parties in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

G. EXHIBITS. Any exhibits to this Agreement will be construed to be an integral part of this Agreement to the same extent as if the same has been set forth verbatim herein.

H. FURTHER ASSURANCES. The parties shall perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

I. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof.

J. INTEGRATION. This Agreement contains the entire agreement between the parties.

K. MODIFICATION. This Agreement may not be modified or amended except by an agreement in writing signed by the parties.

L. NOTICE. Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the address set forth below by any of the following means: (a) personal service; (b) electronic communication, whether by telex, telegram, e-mail or fax; (c) overnight courier; or (d) registered or certified first class mail postage prepaid, return receipt requested.

For the City: Department of Finance
City of Chicago
121 N. LaSalle Street, 7th Floor
Chicago, Illinois 60602
Attention: Comptroller
Attention: Chief Financial Officer

With copies to:

Office of Budget and Management
City Hall, Room 604
121 N. LaSalle Street
Chicago, Illinois 60602
Attention: Budget Director

And to:

City of Chicago
Department of Law
City Hall, Room 600
121 N. LaSalle Street
Chicago, Illinois 60602
Attention: Finance and Economic Development
Division

To the Park District: Chicago Park District
541 North Fairbanks Court
Chicago, Illinois 60611
(312) 742-7529
(312) 742-5328 (Fax)
Attention: General Superintendent

With copies to: Chicago Park District
Department of Law
541 North Fairbanks Court
Chicago, Illinois 60611
(312) 742-7529
(312) 742-5328 (Fax)
Attention: General Counsel

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause (c) hereof shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication given pursuant to clause (d) hereof shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

M. PARTIES' INTEREST/NO THIRD PARTY BENEFICIARIES. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party of this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the City or the Park District shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or the Park District.

N. REPRESENTATIVES. Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact in all matters under this Agreement.

For the City: Office of Budget and Management
City Hall, Room 604
121 N. LaSalle Street
Chicago, Illinois 60602
Attention: Budget Director

For the Park District: Chicago Park District
541 North Fairbanks Court
Chicago, Illinois 60611
Attention: Budget Director

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

O. SEVERABILITY. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein. In such event, the parties shall negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the parties' intent in entering into this Agreement.

P. TITLES AND HEADINGS. Titles and headings to sections herein are inserted for the convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Q. TIME. Time is of the essence in the performance of this Agreement.

R. VENUE AND CONSENT TO JURISDICTION. If there is a lawsuit under this Agreement, each party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

*[The remainder of this page is intentionally blank.
Signatures appear on the following page.]*

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO

By:


Susie Park
Budget Director

CHICAGO PARK DISTRICT

By:


Michael P. Kelly
General Superintendent

By:


Kantrice Ogletree
Secretary